

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NOVIA A. MARSHALL,

Plaintiff,

No. C 14-04409 WHA

v.

CITY AND COUNTY OF SAN  
FRANCISCO,

Defendant.

**ORDER RE MOTION TO DISMISS**

**INTRODUCTION**

In this employment discrimination suit brought by a pro se plaintiff, defendant moves to dismiss on statute of limitations grounds. The motion is granted. Plaintiff is entitled leave to amend her complaint.

**STATEMENT**

Plaintiff filed timely employment discrimination charges with the United States Equal Employment Opportunity Commission and the California Department of Fair Employment and Housing in March 2014. Plaintiff received a right-to-sue letter from the DFEH on May 30, 2014, and commenced this action on October 1, 2014.

The complaint alleges that plaintiff was forced to resign from her job as a social worker with the In-Home Supportive Services for the City and County of San Francisco and not given reasonable accommodations for her learning disability. As a result, plaintiff suffered emotional

1 breakdowns due to severe stress and anxiety caused by the pressure to pass a training course  
2 for the IHSS program. Also, the IHSS failed to keep plaintiff's disabilities confidential.  
3 Plaintiff's sole claim for relief accuses the IHSS for the City and County of San Francisco  
4 of violating the Americans with Disabilities Act in November 2013 for failing to engage in  
5 an interactive process to find her reasonable accommodations for her learning disability.

6 Defendant argues that plaintiff fails to state a claim upon which relief can be granted  
7 because her ADA claim was untimely.

### 8 ANALYSIS

9 This order holds that the statute of limitations for plaintiff's ADA claim has run because  
10 plaintiff did not file suit within ninety days of receiving a right-to-sue letter from the DFEH —  
11 as required by the ADA, 42 U.S.C. 2000e-5(f)(1). *See Stiefel v. Bechtel Corp.*, 624 F.3d 1240,  
12 1245 (9th Cir. 2010). Even though the statute of limitations is a defense, the complaint herein  
13 states facts that, on its face, shows the action is time-barred.

14 By receiving a right-to-sue letter from the California DFEH, plaintiff was entitled  
15 to a federal right-to-sue letter from the United States EEOC. *See Stiefel*, 624 F.3d at 1245.  
16 Although plaintiff does not allege to have received a right-to-sue letter from the EEOC, she did  
17 not need one in order to file her federal ADA claim. *Ibid*.

18 Unfortunately for plaintiff, she misinterpreted the DFEH right-to-sue letter and believed  
19 that it gave her one year to file her federal ADA claim. Rather, the DFEH right-to-sue letter  
20 specified that plaintiff had one year from May 30, 2014, to bring a civil action under the  
21 provisions of the California Fair Employment and Housing Act — the letter said nothing about  
22 the statute of limitations for an ADA claim (*see Opp.*, Marshall Exh. C at 1).

23 A plaintiff generally has ninety days to file suit in federal court after receiving an EEOC  
24 or DFEH right-to-sue letter. *See* 42 U.S.C. 2000e-5(f)(1); *see also Stiefel*, 624 F.3d at 1245.  
25 This ninety-day filing period acts as a statute of limitations on an ADA claim. *Stiefel*, 624 F.3d  
26 at 1245.

27 "[T]he 90-day filing period is a statute of limitations subject to equitable tolling in  
28 appropriate circumstances." *Id.* (quoting *Valenzuela v. Kraft*, 801 F.2d 1170, 1174 (9th Cir.

1 1986)). “The purpose of the statute, the notice to defendant, and the diligence demonstrated by  
2 the plaintiff determine the availability of tolling[.]” *Valenzuela*, 801 F.2d 1170 at 1175.

3 Plaintiff did not allege that she is entitled to equitable tolling of the ninety-day period to  
4 file her federal ADA claim. The DFEH right-to-sue letter informed plaintiff that her right to sue  
5 may be tolled upon a request made to the EEOC to perform a substantial weight review of the  
6 DFEH’s findings within fifteen days of receiving the right-to-sue letter (Opp., Marshall Exh. C  
7 at 1). Plaintiff has not alleged that she made such a request.

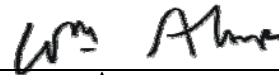
8 Accordingly, plaintiff had until August 28, 2014, to file her ADA claim in state or federal  
9 court. Because plaintiff did not file her complaint with this Court until October 1, 2014, the  
10 statute of limitations bars her ADA claim — unless plaintiff can state additional facts to  
11 demonstrate that she is entitled to equitable tolling or some other tolling that would make her  
12 ADA claim timely. Alternatively, plaintiff may still bring a civil action in state court under the  
13 provisions of the California FEHA until May 30, 2015.

#### 14 CONCLUSION

15 For the foregoing reasons, defendant’s motion to dismiss is **GRANTED** and the hearing  
16 set for January 20, 2015, is hereby **VACATED**. Plaintiff will have until **FEBRUARY 3, 2015,**  
17 **AT NOON**, to move to amend via a motion noticed on the normal 35-day calendar. A proposed  
18 amended complaint must be appended to plaintiff’s motion to amend. The motion should clearly  
19 explain how the amended complaint cures the untimeliness of plaintiff’s federal ADA claim.  
20 The amended complaint must state additional facts demonstrating that equitable tolling or some  
21 other tolling is justified. If such a motion is not filed by the deadline, this case will be closed.

22  
23 **IT IS SO ORDERED.**

24  
25 Dated: January 13, 2015.

26   
27 WILLIAM ALSUP  
28 UNITED STATES DISTRICT JUDGE